

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, et al.)	
)	
Plaintiffs,)	
v.)	Case No. 4:05-cv-00329-GKF-PJC
)	
TYSON FOODS, INC., et al.)	
)	
Defendants.)	

DEFENDANTS’ MOTION FOR LEAVE TO FILE *BRIEF REGARDING “STATE OF OKLAHOMA’S NOTICE OF FILING OF DOCUMENT” [DKT #2108]* OR, IN THE ALTERNATIVE, MOTION TO STRIKE

Defendants respectfully petition the Court for leave to file the attached brief. The brief may assist the Court in addressing *Defendants’ Motion to Dismiss for Failure to Join the Cherokee Nation as a Required Party or, in the Alternative, Motion for Judgment as a Matter of Law Based on a Lack of Standing* [DKT #1788 & #1790] (“Defendants’ Rule 19 Motion”).

On May 20, 2009, Plaintiffs filed a “Notice of Filing of Document” (hereafter the “Notice”). Dkt. #2108. The Notice attached a document that purports to be an agreement between the Cherokee Nation and the State of Oklahoma (hereafter the “Purported Agreement”). The Notice asserts that the Purported Agreement “relates to issues raised in” Defendants’ Rule 19 Motion, *id.* at 1, but provides no further explanation of how the Purported Agreement was created, what issues before the Court are affected by the Purported Agreement, or how the Purported Agreement affects those issues (if at all).

Because Plaintiffs filed the Notice after the close of briefing on Defendants’ Rule 19 Motion, the Notice violates the Federal Rules of Civil Procedure and should be stricken. *See Southern Star Central Gas Pipeline, Inc. v. Greuel*, 2009 U.S. Dist. LEXIS 36677, at *14, n.4

(D. Kan. April 30, 2009) (“[O]nce movant has filed its reply brief, there is no provision for the filing of any other papers, whether they are called a ‘supplement,’ sur-reply, further response or something else.”); *E.T.I. Euro Telecom Int’l N.V. v. Republic of Bolivia*, 2008 U.S. Dist. LEXIS 67217, at *1-2, n.2 (S.D.N.Y. Sept. 4, 2008). However, if the Court wishes to consider Plaintiffs’ Notice, in lieu of striking this late document Defendants request the opportunity to file the attached brief. The brief explains that the Purported Agreement is invalid because it violates Oklahoma law against the assignment of tort claims and because it does not comply with Oklahoma’s requirements for an agreement between the State and an Indian Tribe. The brief also discusses the Purported Agreement’s impact on the issues raised in the Rule 19 Motion.¹

Supplemental briefs such as the attached document may only be filed upon motion and leave of the Court. LCvR7.2(h). Generally, courts grant leave to file supplemental briefs “in order to be fully informed on ... complex and important issues” and when they are “helpful to the Court.” *Alexander v. Oklahoma*, 2004 U.S. Dist. LEXIS 5131 at *17 (N.D. Okla. Mar. 19, 2004). Defendants submit that the attached brief meets these standards because it sets forth the legal precedents relevant to Plaintiffs’ Notice and the Purported Agreement, and explains how the Purported Agreement relates to the arguments in Defendants’ Rule 19 Motion. *See, e.g., Norwood-Thomas v. City of Milwaukee*, 2008 U.S. Dist. LEXIS 104642, *2-3 (E.D. Wis. Dec. 18, 2008) (emphasizing the benefit of “full briefing” before “ruling definitively on the matter”); *Leaf Funding, Inc. v. Donahue*, 2008 U.S. Dist. LEXIS 45208 *4-5 (S.D. Ohio June 6, 2008) (noting the “benefit of full briefing on issues that the parties may have never fully contemplated”).

¹ Plaintiffs have not yet produced the materials relating to the creation of the Purported Agreement. Plaintiffs’ anticipated production of those materials may raise additional relevant information or issues.

For the foregoing reasons, Defendants respectfully request that the Court grant this motion.

Respectfully submitted,

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I certify that on the 18th day of June, 2009, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

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